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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1922.

No. 464.

GEORGIA RAILWAY & POWER CO. ET AL., PLAINTIFFS IN ERROR AND PETITIONERS IN CERTIORARI.

vs.

THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK, DEFENDANT IN ERROR AND RESPONDENT IN CERTIORARI.

SUPPLEMENTAL BRIEF OF DEFENDANT IN ERROR AND RESPONDENT IN CERTIORARI.

This court recognizes that State appellate courts differ in their decisions as to the effect upon second appeal, of a judgment on first appeal in the same case; some adopting the rule of "law of the case," which is merely a practice generally to refuse to reopen what has been decided, and others, the stricter rule of *res adjudicata*. And this court deems the highest court of the State the final judge in this matter.

King *vs.* West Virginia, 216 U. S., 92.

The Georgia law as to the existence of contract and the nature thereof, is similar to that obtaining in other jurisdictions.

Scranton *vs.* Public Service Commission, 268 Pa. St., 192.

Collingsdale *vs.* Philadelphia Rapid Transit Co., 274 Pa. St., 124, holding

that act requiring approval of municipal contracts by utility commission did not relate to contract made prior to its enactment.

And the Georgia State court view has the support of a Federal court in that State.

Mercantile Trust Co. *vs.* College Park R. Co. (N. D. Ga.), 101 Fed., 347.

A public-utility corporation is not only subject to the conditions upon which its special franchises are granted, but is also subject to the obligations of its charter, and must discharge the public duties which, where in the value of its business, such as supplying reasonably adequate facilities, even though by doing so, some pecuniary loss may result.

Missouri Pac. R. Co. *vs.* Kansas, 216 U. S., 262, 278.

Northern Pac. R. Co. *vs.* North Dakota, 236 U. S. 585, 595.

Hocking Valley R. Co. *vs.* Public Utilities Com., 92 Oh. St., 9, and cases cited.

Assuming there is no valid contract, the College Park line being a part of a system of street railways and operated as such (Record, p. 59), the question whether the rate, or transfer orders, or service orders, are confiscatory or otherwise

arbitrary within the inhibition of the 14th Amendment, is not to be determined alone with reference to the College Park line, but with respect to the entire system; and it was not and is not contended that the system earnings are unremunerative.

Puget Sound Traction Co. *vs.* Reynolds, 244 U. S., 238, distinguishing principle of

Northern Pac. R. Co. *vs.* North Dakota, 236 U. S., 585,

and of the subsequent decisions following that case, which are cited by plaintiffs in error in their brief, pages 40, 52. See also District of Columbia *vs.* Capital Traction Co., 41 App. D. C., 115.

Plaintiffs in error complain only of transfer orders with respect to transfers issued to passengers boarding cars in College Park for use on lines other than the College Park line. If any line is without compensation for service rendered on such transfers, is not the College Park line? Its contract is not impaired.

Detroit United Railway *vs.* Detroit, 248 U. S., 429, 436.

Furthermore, the contract creates no obligation respecting the expense, if any, which the transfer orders entail, and there is, therefore, no impairment of the obligation of the contract.

See Grand Trunk Western R. Co. *vs.* R. R. Com., 221 U. S., 400.

The plaintiffs in error cannot surrender their franchise and cease operation.

Columbus Railway Co. *vs.* Columbus, 249 U. S., 399.

They operate not only under the consent franchise of the municipality, but also under franchises from the State (Record, pp. 128, 133), and they cannot surrender either to the municipality or the State Railroad Commission, but only to the State in such manner as the Legislature of the State may prescribe.

Railroad Commission *vs.* Macon Railway & Light Co., 151 Ga., 256.

Respectfully submitted,

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